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September 9, 2003

FRA-2003-16271-1

Mr. George Gavalla
Associate Administrator for Safety
Federal Railroad Administration
1120 Vermont Ave., N.W., MS 25
Washington DC 20590

The American Short Line and Regional Railroad Association's Safety Committee recently formed a sub committee tasked with trying to reduce regulatory burdens on the Class II and III railroads. In the past, locomotive inspection regulations were written for railroads with high volume and heavy tonnage traffic operating on a 24/7 schedule. Class II and III railroads are required to comply with the same regulations even though their traffic and work schedules are substantially less than their Class I counterparts.

To address this operational difference, ASLRRA has developed a proposed waiver which is designed to reduce the regulatory burden for small railroads in connection with locomotive inspection requirements which pertain to Parts 229.23 and 229.25 of 49 CFR. The waiver would be available to any ASLRRA member who wishes to participate, through a required written agreement to perform specific locomotive inspections. The purpose of this waiver is not to eliminate inspections and testing, but to conduct inspections in relation to actual miles operated by non-Class I railroads.

This waiver will not jeopardize or reduce the emphasis on railroad safety. We have researched FRA safety data and have not found any record of employee accidents or fatalities that could be attributed to a lack of compliance with Parts 229.23 or 229.25.

ASLRRA requests that FRA approve this waiver and allow Class II and III railroads to implement the procedure in compliance with the regulation. Once approved, the waiver will save small railroads millions of dollars without compromising safety to railroad employees or the public.

Respectfully,

Richard F. Timmons

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BEFORE THE
FEDERAL RAILROAD ADMINISTRATION

PETITION FOR RELIEF FROM
49 C.F.R., 229.23, AND 229.25

SUBMITTED BY THE
AMERICAN SHORT LINE AND REGIONAL RAILROAD ASSOCIATION
ON BEHALF OF ITS MEMBERS SIGNATORY TO THIS PETITION

The American Short Line and Regional Railroad Association, on behalf of those members, signatory to this petition, submits the following petition for relief from the regulatory requirements of 49 C.F.R Parts 229.23 and 229.25. This petition seeks relief from those regulatory parts which are overly burdensome and extremely costly to small and regional railroads. In place of the current regulatory requirements, ASLRRA would like to propose a set of standards that would be more beneficial to the Class II and III railroads and yet not jeopardize safety. The ASLRRA proposal is outlined below:

- I. Current regulatory requirements from which we are seeking relief;
- II. Reason for relief request;
- III. ASLRRA proposal;
- IV. Summation.

Attachments:

Proposed ASLRRA Safety Performance Standard
Proposed Action Plan Form

I. Current Regulatory Requirements From Which Relief is Sought.

The current regulations published in 49 C.F.R, 229.23 and 229.25 Periodic inspection (229.23) and Periodic tests (229.25).

- Part 229.23 requires railroads to inspect locomotives periodically, but not to exceed 92 days;
- Part 229.25 outlines the procedures for the inspection of the locomotive. Railroads are required to basically test gauges and all electrical devices, test and clean all cable connections, and visually inspect insulation.

Each inspection requires the railroad to record the results on an inspection form. If any non-complying deficiencies are discovered during the inspection of the locomotive, the person doing the inspection must make a notation on the various forms and the locomotive cannot be used until the deficiency is corrected. And the inspection form must be signed by both the inspecting person and the person making the repairs and kept on file.

What this relief proposes is relief from some of the provisions of Part 229.23 and Part 229.25. It is **not** the intent of this relief to obviate safety, or place people or equipment in danger, but to find relief in non-safety requirements that can be met in other ways.

II. Reason for relief request

ASLRRA and its members strongly feel that many regulatory requirements were designed and written for railroads that normally operate around the clock, seven days a week. The majority of locomotives on short line and regional railroads are simply not subject to the same operating mandates as the Class I railroad locomotives. A Class I railroad may average well over 300-400 miles per locomotive day. In 92 days, that would be 30,000++ miles or approximately once a quarter of every year (or bi-yearly). A short line may operate 120 miles a day, 5 days a week and in 92 days that would equate to less than 8, 000 miles In addition, short line railroads do not handle the millions of tons of traffic that the Class I railroads do, nor do they operate over hundreds of miles of track. Most locomotives on a Class II and III railroad operate over relatively very short distances. And during times of reduced business volumes, some locomotives ₂ on short lines may not operate for days at a time.

Unfortunately, the regulation does not distinguish locomotives that operate on a 24hour/7 day a week schedule, from the locomotive that operate 8 – 12 hours a day, 5 – 6 days a week. All are regulated in the same manner, as to the maximum use possible. This regulatory requirement has in the past and continues to produce an unreasonable economic and logistical burden on smaller railroads, with no corresponding safety benefit.

Recent regulatory efforts have recognized the different operating characteristics of smaller railroads. These efforts have also recognized improved technologies in railroad equipment, material, inspection, diagnostic and maintenance techniques. Exemptions have been provided to make regulations economically feasible and easier to comply with while not comprising safety. Newer regulations clearly recognize that all railroads are not the same and should not be treated, or regulated, in the same manner. It is time we revisit older, and in some cases outdated regulations to make them reflective of the current railroad operating environment.

ASLRRA would like to stress, emphatically, that it is not the intention of this relief to jeopardize safety in any manner. ASLRRA and its member railroads are strong proponents of safety. If this waiver request could in anyway jeopardize the safety of our employees, our companies or the public, we would not be moving forward in this process.

III ASLRRA proposal

Part 229.23 & Part 229.2, requires periodic inspections not to exceed 92 days. Again this may be appropriate for locomotives operating in Class I conditions however, for non-Class I railroads, this inspection is extremely laborious, time consuming, economically unfeasible and has no evident safety benefit for smaller railroads.

A Class I railroad may average well over 300-400 miles per locomotive day. In 92 days, that would be 30,000++ miles or approximately once a quarter of every year (or bi-yearly). A short line may operate 120 miles a day, 5 days a week and in 92 days that would equate to less than 8, 000 miles. In view of the dramatic difference in locomotive hours, ASLRRA request that all ASLRRA member railroads, signatory to this relief be exempt from the provisions of the periodic inspection requirements (Part 229.23 & Part 229.25, but continue to be subject to the provisions of Annual Testing (Part 229.27) once each calendar year.

All railroads signatory to this relief petition will adopt a "Performance Standard" (see below for example) that will outline an inspection and repair policy to ensure that all locomotives will be inspected and repairs made on a timely basis, depending on the severity of the repair. Under no circumstances will a railroad operate a locomotive that is in need of repairs that will jeopardize safety to its employees, the general public and/or other equipment.

IV. Summation

It is the American Short Line and Regional Railroad Associations belief that this relief will not in any way jeopardize safety in our industry. Short line railroads do not operate on the same demanding schedule which is required of locomotives on Class I operations, due to the differences in size , miles, tonnage an the number of locomotives that have to be maintained.

FRA recognizes the vast difference between large and small railroads, and has been extremely helpful in assisting the smaller railroads to be compliant and to keep them in operation, and ASLRRA appreciates this cooperative working relationship. Safety in our industry is one aspect that we can all be proud of and it is getting better. This effort could not have been achieved without the valuable contributions and outstanding working relationship of all concerned in our industry. This relief will provide another step towards understanding small railroad operations and how we can assist them in providing that very valuable and necessary service to our customers and nation.

**ASLRRA Safety Performance Standard
For railroads signatory to this
Locomotive Inspection relief**

Safety Performance Standards for operating locomotives for Railroads signatory to this relief.

Each railroad will adopt a company policy statement that will require each operating locomotive to be in safe operating condition. All non-complying safety conditions will be reported to the railroad's designated person, who will ensure that all necessary safety related repairs are made to that locomotive prior to going into operation. If the designated person determines that, in his/her qualified opinion, the repairs are not safety critical and the locomotive may be used until the repair can be made, that information will be kept in a log for review by FRA inspectors, upon request.

All repairs that are considered "non-compliant" must be made prior to putting the locomotive back into service. However, no records are necessary when repairs are made prior to returning the locomotives to service.

Each railroad will also have a company policy which would require that, at a minimum, once each calendar year, the equivalent of 49 CFR Part 229.27 Annual Test will be performed on each locomotive. If a locomotive fails to comply to any part of the "Annual Test", the railroad will develop an ""Action Plan"" on when the necessary repairs will be made. The locomotive will be allowed to be used if the required repairs are not safety related. The railroad will keep all ""Action Plans"" on file for FRA review upon request. "Action Plans" would not have to be approved by FRA. However, FRA has the authority to make recommendations if those recommendations are based on Safety.

Railroads signatory to this relief and found that locomotives are operated in an unsafe condition and not in compliance with the company policy or the railroad's "Action Plan" would lose all privileges under this relief and become subject to the above referenced regulations and therefore subject to the provisions and penalties of Part 229.23 and Part 229.25.

Locomotive Inspection and Repair Policy (Railroad Name)

(Railroad Name) requires that each operating locomotive will be in safe operating condition. It will be the responsibility of the locomotive engineer and/or conductor **(or trainmen or any assigned person that will be operating the locomotive)** to ensure that all safety appliances on the locomotive are in working condition.

Any complying safety conditions will be reported to the railroad designated person **(add either the name of the designated person responsible or the title of the person)**. The **(name of the designated person responsible)**, will ensure that all necessary safety related repairs are made to that locomotive prior to going into operation. If the designated person determines that in his/her qualified opinion, the repairs are not safety critical and the locomotive may be used until the repair can be made, that information will be kept in a log for review by FRA inspectors, upon request.

All repairs that are considered "non-compliant" must be made prior to putting the locomotive back into service. However, no records are necessary when repairs are made prior to returning the locomotives to service.

Once each calendar year, the equivalent of 49 CFR Part 229.27 Annual Test will be performed on each locomotive. If a locomotive fails to comply with any part of the "Annual Test", the **(railroad name)** will develop an "Action Plan" for each locomotive outlining when the necessary repairs will be made. The "Action Plan" will be kept on file at the **(insert where the action plan will be on file)** and kept up to date when repairs are made. Railroad will keep all "Action Plans" on file for FRA review upon request. The "Action Plan" would not have to be approved by FRA. However, FRA has the authority to make recommendations if those recommendations are based on Safety. The locomotive will be allowed to be used if the required repairs are not safety related.

If **(Railroad Name)** does not comply to the provisions this relief, or to each existing "Action Plans" and/or locomotives are operated in a mechanically unsafe condition this railroad would loose all privileges under this relief and become subject to the above referenced regulations and therefore subject to the provisions and penalties of Part 229.23 and Part 229.25.

(Railroad Name)
Action Plan for Locomotive Repair

In accordance to the provisions of the ASLRRA Relief petition to which **(Railroad Name)** is a party, it is required that each operating railroad be subject to the provisions of 49 CFR Part 229.27, Annual Test. If any locomotive is found to be deficient in this test and repairs are necessary, but cannot be immediately done the following form must be completed and kept on file until the plan expires or when all work, as required, is completed.

Action Plan Number _____

Date: _____

Locomotive Number _____

Person(s) Submitting Repair Recommendation:

Name: _____

Position: _____

Employee Number or Identification: _____

Reported Repairs: _____

_____ (use reverse side if necessary)

Signature: _____

Action that will be taken to accomplish repairs: _____

Signature: _____

Dates when each repair will be performed list chronologically:

Dates and signatures when each repair was completed:

Note: Additional forms may be used for each Action Plan, and attach all pertinent data to support fulfilling the requirements of this Action Plan. Dates and signatures ₆ are required where indicated.